UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/708
28 July 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 708

Case No. 776: OUDEH

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 5 January 1994, Hassan Ahmed Oudeh, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed an application requesting the Tribunal, inter alia, to order:

"1. [The production of certain documents]

2. [That the Respondent reinstate] the Applicant to service, and [consider] him on special leave with full pay ever since he applied for reinstatement for the first time after his separation, i.e. 1988.

3. [That the Respondent compensate] the Applicant for the loss and injury he sustained estimated at US$45,000.

4. [That the Respondent pay] secretarial and the legal counsel's fees estimated at US$2,000."

Whereas the Respondent filed his answer on 4 May 1994;

Whereas the Applicant filed written observations on 1 August 1994;

Whereas, on 29 November 1994 and 12 June 1995 the Respondent submitted additional statements;

Whereas, on 18 July 1995, at the Tribunal's request, the Respondent provided additional comments;

Whereas, on 24 June, 11 and 25 July 1995, the Applicant submitted additional statements and documents;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 12 October 1963 as a Preparatory Teacher, at grade 6, step 01, on a temporary indefinite appointment. He served thereafter until 31 May 1986, on which date he resigned from the Organization having reached grade 10, step 16, as a Senior Arabic Teacher. The Applicant was then paid his separation benefits.

On 20 April 1992, the Applicant wrote to the Director of UNRWA Affairs, Syria, requesting "either to have me reinstated to my teaching post or otherwise have me paid my terminal emoluments in addition to the monthly salaries of the period from 1988 to 1992 during which I was unemployed due to the losses sustained by me." In his letter, the Applicant stated that he had submitted an application for reinstatement in his post on 5 August 1988 and should have been re-appointed to a teaching position with the Agency "on the basis of the Agency rules providing that priority in appointment should be given to the resigning staff members rather than new candidates. However, UNRWA's Department of Education disapproved of my reappointment under the pretext that during my period of resignation I did not work in my field of specialization as a teacher."

In a reply dated 20 June 1992, the Field Director advised him as follows:

> "A) Your prior knowledge of the instructions concerning the so-called 'priority' of ex-teachers for re-employment which was abrogated in October 1985 should have urged you to inquire about the validity of that instruction

before you resigned in 1986; particularly so, because you had pinned your hopes for re-employment with the Agency on that instruction;

B) That instruction was only mentioned in Personnel Directive A/4, which means it was intended only for consideration of Administration staff upon deciding on recruitment of new teacher candidates, and in no way was it considered an exclusive right for re-employment as the policy of the Agency has always been before the introduction and after the cancellation of that instruction to recruit the best qualified candidates;

C) Had that instruction not been abrogated before you resigned there would have been no guarantee to prevent its abrogation thereafter as the Agency can and does change its rules and policies whenever the Agency deems appropriate, which you must undoubtedly have realized through your long service with this Agency."

After an exchange of correspondence with the Respondent, on 16 November 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 28 October 1993. Its recommendation reads as follows:

"IV. Recommendation

14. In view of the foregoing [i.e. that priority over new candidates was to be given to those who applied for re-employment within 3 years of the date of their resignation and that because he was not a staff member, the Applicant could not submit an appeal to the Joint Appeals Board] and without prejudice to any further oral or written submissions to any party the Applicant may deem pertinent, the Board unanimously makes its recommendation to declare the application not receivable."

On 4 November 1993, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"I enclose a copy of the report of the Joint Appeals Board on your appeal, which was forwarded to me under cover of a memorandum dated 28 October 1983 from the Chairman. As

you can see, the Board has concluded that it has no jurisdiction to entertain the appeal, which was held to be not receivable. I accept this conclusion..."

On 5 January 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent abrogated unilaterally the policy of granting priority to staff previously employed without safeguarding their acquired rights.

2. The decision is flawed by mistake of facts since the change in policy may not have been made clear to all staff involved.

3. The Respondent breached his contractual commitments to the staff as expressed in his Memorandum of Understanding in connection with the priority of reinstatement of teachers.

Whereas the Respondent's principal contentions are:

1. The Applicant has not alleged a non-observance of his employment contract.

2. On the merits of the Applicant's application, there is no evidence that the Respondent's decision was in any way improper and there is no evidence that the Applicant applied for reinstatement in 1988.

The Tribunal, having deliberated from 7 to 28 July 1995, now pronounces the following judgement:

I. The Tribunal has considered in previous cases the issues raised in this case regarding the abrogation of priority consideration for re-employment of teachers. (Cf. Judgements No. 650, Bakr (1994) and No. 684, Abdul Rahim (1994)).

II. Unlike those cases, however, in this case, the Applicant provides no documentary evidence to support his assertion that he applied for re-employment with the Agency in 1988, within three years following his resignation. The first record of this assertion is to be found in a letter dated 20 April 1992, almost four years later, from the Applicant to the Director of UNRWA Affairs, Syria.

III. It is this letter of 20 April 1992, and the reference contained therein to the Applicant's application for re-employment, "submitted on 5 August 1988," which is put forward by the Applicant as evidence. He argues that this was not contested by the Respondent. Although the reply to this letter, dated 20 June 1992, cites the abrogation of priority consideration as a reason for rejecting the Applicant's request for relief, the Respondent now, in the pleadings before the Tribunal, explicitly contests the assertion that the Applicant applied for re-employment in 1988.

IV. The Tribunal considers that the failure of the letter of 20 June 1992 to challenge the Applicant's assertion that he had applied for re-employment cannot in itself be considered an admission that the Applicant's assertion is true. Rather it could be that, in rejecting the Applicant's request for relief, the Respondent did not have to reach the factual issue of whether the Applicant applied for re-employment because his request was rejected on broader grounds.

V. The Tribunal has examined the Applicant's personnel file and finds no evidence of his having applied for re-employment in 1988. Furthermore, the Applicant has not produced a copy of any letter sent by him or of any rejection received from the Department of Education. In these circumstances, the Tribunal considers that the Applicant has not met the burden of proof required to establish his claim.

VI. For the foregoing reasons, the application is rejected in its entirety as are the requests for the production of documents and for costs.

(Signatures)

Samar SEN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary